UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX

In the Matter of:	)	
	)	
BLUE LAKE POWER, LLC	)	Docket No. R9-2014-02
	)	FINDING AND NOTICE OF
Proceeding under Section 113(a)	)	VIOLATION
of the Clean Air Act,	)	
42 U.S.C. § 7413(a)	)	
	)	

FINDING AND NOTICE OF VIOLATION

This Finding and Notice of Violation ("NOV") is issued to Blue Lake Power, LLC ("BLP") for violations of the Clean Air Act (the "Act"), as amended, 42 U.S.C. §§ 7401-7671q, at its electric generating facility located in Humboldt County, California (the "Facility"). The North Coast Unified Air Quality Management District (the "District" or "NCUAQMD") has primary jurisdiction over stationary sources in Humboldt County. BLP violated and continues to violate the District's state implementation plan ("SIP") permitting rules, namely Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3) and 240(a), at the Facility. This NOV is issued pursuant to Sections 113(a)(1) and 167 of the Act. Section 113(a)(1) requires the Administrator of the United States Environment Protection Agency ("EPA") to notify any person she finds in violation of an applicable implementation plan or a permit. The authority to issue this NOV has been delegated to the Regional Administrator of EPA Region IX and further re-delegated to the Director of the Enforcement Division, EPA Region IX.

Summary of Violations

The Facility is an electric generating plant that includes one biomass-fired boiler, one propane gas burner, two diesel-fired compression ignition engines, and associated wood transportation equipment including waste conveyers and wood hoggers, wheel loaders, and various rolling stock. The control equipment includes a mechanical multi-clone collector, an electrostatic precipitator, and a forced over-fire air system.

BLP made physical and operational changes to the Facility from 2008 through 2010. EPA has determined that these physical and operational changes subjected the Facility to the District's permitting rules since the changes increased the Facility's emissions of carbon monoxide ("CO"), oxides of nitrogen ("NO_x") and particulate matter ("PM_{10}"). The Facility was also restarted after being idle for nearly eleven years, which also subjects it to the District's permitting rules as a new source. Either as a modified or new major source, the Facility became subject to the Prevention of Significant Deterioration ("PSD") requirements of the Act, and the appropriate emissions controls resulting from these PSD requirements should have been included in an Authority to Construct ("ATC") and a Permit to Operate ("PTO") issued by the District.

BLP's failures to apply for and obtain an ATC from the District before making the physical changes and restarting operations at the Facility after an extended shutdown, obtain a PTO prior to operating or using the Facility, and comply with the District's SIP-approved PSD program by including PSD

requirements in the ATC and PTO were, and continue to be, violations of the District's Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3) and 240(a).

STATUTORY & REGULATORY BACKGROUND

National Ambient Air Quality Standards

1. The Administrator of EPA, pursuant to authority under Section 109 of the Act, 42 U.S.C. § 7409, promulgated National Ambient Air Quality Standards ("NAAQS") for certain criteria pollutants relevant to this NOV, including CO, NO_x (measured as NO_2) and PM_{10}. *See* 40 C.F.R. §§ 50.6, 50.8 and 50.11.

2. Pursuant to Section 107(d) of the Act, 42 U.S.C. § 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region ("AQCR") in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The CO, NO_2 and PM_{10} attainment status designations for the California AQCRs are listed in 40 C.F.R. § 81.305.

Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA a plan that provides for the implementation, maintenance and enforcement of primary and secondary NAAQS in the state. Upon approval by EPA, the plan becomes part of the applicable SIP.

Prevention of Significant Deterioration Program

3. Section 110(a)(2)(C) of the Act, 42 U.S.C. § 7410(a)(2)(C), requires that each SIP include a PSD permit program as provided for in Part C of Title I of the Act, 42 U.S.C. §§ 7470-7491 ("Part C"). Part C sets forth requirements

for SIPs for attainment areas to ensure maintenance of the NAAQS. Under Part C, PSD permitting requirements apply to all new or modified major stationary sources that emit significant amounts of regulated pollutants that are unclassified or meeting NAAQS in any particular AQCR.

4. EPA promulgated federal PSD regulations at 40 C.F.R. § 52.21 on June 19, 1978, pursuant to Sections 160 through 169 of the Act, 42 U.S.C. §§ 7470-7479. 43 Fed. Reg. 26,402. Subsequent to 1978, the PSD regulations have been periodically revised, including on Aug. 7, 1980. 45 Fed. Reg. 52676. The federal PSD regulations apply in areas without a SIP-approved PSD program.

5. While the District operates a SIP-approved PSD program, as further discussed in Paragraph 17, it incorporates by reference at various times the 1980 version of 40 C.F.R. § 52.21. Therefore, all citations to the federal PSD regulations in this NOV refer to the 1980 version of the federal PSD regulations ("PSD Regulations").

6. The PSD permitting process generally requires that, among other things, an owner or operator of a new or modified major stationary source obtain a PSD permit, 40 C.F.R. § 52.21(i); install best available control technology (BACT), 40 C.F.R. § 52.21(j); model air quality, 40 C.F.R. § 52.21(l); and perform a detailed impact analysis regarding both NAAQS and allowable increments, 40 C.F.R. § 52.21(k).

7. With limitations that do not apply in this case, 40 C.F.R. § 52.21(b)(1)(i)(b) defined a "major stationary source"

as "any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act."

8. For purposes of PSD, a "new" source includes the reactivation of a permanently shut down facility.

9. To determine whether a shutdown is permanent, EPA considers the intent of the owner or operator at the time of and during the shutdown based on all facts and circumstances, including the amount of time the facility has been out of operation, the reason for ceasing operations, statements by the owner or operator regarding intent, cost and time required to restart the facility, status of permits, and ongoing maintenance and inspections conducted during the shutdown. *See* In the Matter of Monroe Electric Generating Plant Entergy Louisiana, Inc., Petition No. 6-99-2, EPA Order Partially Granting and Partially Denying Petition for Objection to Permit 8-10 (June 11, 1999) ("Monroe Electric Order").

10. The PSD Regulations defined a "major modification" as "any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Act." 40 C.F.R. § 52.21(b)(2)(i).

11. The PSD Regulations, at 40 C.F.R. § 52.21(b)(3)(i), defined "net emissions increase" as the "amount by which the sum of the following exceeds zero:

a. Any increase in actual emissions from a particular physical change or change in the method of operation at a

stationary source; and

b. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and otherwise creditable."

12. 40 C.F.R. § 52.21(b)(23)(i) defined "significant" net emissions, in reference to CO, as an increase that would equal or exceed 100 tons per year (tpy); in reference to NO_x, as an increase that would equal or exceed 40 tpy; and in reference to PM_{10}, as an increase that would equal or exceed 15 tpy.

13. 40 C.F.R. § 52.21(b)(21)(ii) defined "actual emissions" as follows: "the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four month period which precedes the particular date and which is representative of normal source operation." The PSD regulations also provided that "[f]or any emissions unit . . . which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit on that date." 40 C.F.R. § 52.21(b)(21)(IV).

14. 40 C.F.R. § 52.21(b)(4) defined "potential to emit" as the "maximum capacity of a stationary source to emit a pollutant under its physical or operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including the air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable."

15. Even if the restart of a long-dormant source does not qualify it as a "new" source for PSD purposes, the restart or physical changes made to the source may still subject it to PSD requirements as a "major modification." If the source was non-operational for the source's baseline under PSD, its "actual emissions" would be zero. In such a case, the source's "net emissions increase" is "significant" if the overall emissions from the source after the restart exceed the PSD "significance" levels set forth in 40 C.F.R. § 52.21(b)(23)(i). *See* Monroe Electric Order at 13-15.

SIP-Approved ATC and PTO Programs

16. The District has primary jurisdiction over stationary sources of air pollution sources in the Humboldt, Del Norte and Trinity counties in Northern California. This jurisdiction includes the Facility.

17. In 1985, EPA approved the District's PSD rules, including Rules 130, 200, 220 and 230. 50 Fed. Reg. 30941 (July 31, 1985); and the District's Permit to Operate rule, Rule 240, 50 Fed. Reg. 19529 (May 9, 1985). These District rules apply to the Facility and the violations identified in this NOV, and references to them refer to the 1985 SIP-approved versions of these rules.

18. The initial statement to the District's SIP-approved New Source Review permitting rules state that "All permit requirements and procedures covered by this chapter are and shall be interpreted in accordance with the provisions of the Clean Air Act of 1977; [and] The Code of Federal Regulations

52.21 (August 7, 1980); . . . ."

19. An owner or operator must obtain an ATC from the District "prior to starting construction, modification, operation or use of any stationary or indirect source which may cause, potentially cause, reduce, control, or eliminate the emission of air contaminants." NCUAQMD Rule 200(a).

20. Furthermore, an ATC issued to a new major stationary source or for a major modification as defined in 40 C.F.R. § 52.21 must meet and contain all applicable PSD requirements. NCUAQMD Rule 200(c)(6); Rule 230(a)(3).

21. Similar to the federal PSD requirements, the District's PSD permitting process requires, among other things, that for pollutants emitted in significant amounts, the owner or operator of a new or modified major stationary source apply BACT, NCUAQMD Rule 220(b)(1) (incorporating by reference 40 C.F.R. § 52.21(b)(12)); conduct air quality analysis and monitoring, NCUAQMD Rule 220(b)(2) (incorporating by reference 40 C.F.R. § 52.21(m)); and analyze the impact on PSD increments and the source's own net emissions increases, NCUAQMD Rule 220(b)(3).

22. In determining when an ATC must include PSD requirements, emissions from a new or modified source are based on a source's "potential to emit" any air contaminant subject to regulation under the Act. NCUAQMD Rule 220(a)(1) (which incorporates by reference 40 C.F.R. § 52.21(b)(4)). In addition, emissions from a proposed modified source are based on the cumulative net emission increases or reductions occurring

from the modifications and both the ATC and PTO conditions. NCUAQMD Rule 220(a)(2) (which incorporates by reference 40 C.F.R. §§ 52.21(b)(2) and (3)). Finally, for the emissions increase analysis, baseline emissions of existing sources are generally based on the actual rate of emissions during the two year period of operation prior to the date of application. NCUAQMD Rule 220(a)(3) (which incorporates by reference 40 C.F.R. §§ 52.21(b)(2) and (3)).

23. The District rules define "potential to emit" as the "maximum capacity of a stationary source to emit an air pollutant under its physical and operational design, after considering physical and operational limitations that are enforceable by conditions imposed by the district in both the Authority to Construct and Permit to Operate." NCUAQMD Rule 130(p4) (which incorporates by reference 40 C.F.R. § 52.21(b)(4)).

24. The District rules define "significant" emissions as the "potential of a new or modified stationary source to emit air contaminants that would equal or exceed" 100 tons per year for CO, 40 tons per year for NO_x, and 15 tons per year for PM_{10}. NCUAQMD Rule 130(s2) (which incorporates by reference 40 C.F.R. § 52.21(b)(23)(i)).

25. The District rules define "net increase in emissions" as the "amount by which the sum of any increase in actual emissions from a particular physical change or change in method of operation at a stationary source, and any other increases and decreases in actual emissions at the source that are creditable

in accordance with 40 C.F.R. § 52.21(b)(3) and (21), exceed zero." NCUAQMD Rule 130(n1).

26. The District's Rule 200(b) requires an application for an authority to construct, erect, modify, replace, operate, or use any equipment or indirect source that may cause, potentially cause, reduce, control, or eliminate the emission of air contaminants to be filed at the office of the District or its designated agent for accepting applications.

27. An ATC remains in effect for one year, or until a PTO is issued, whichever comes first. NCUAQMD Rule 200(a).

28. An owner or operator must obtain a PTO prior to operating any stationary source that will cause, reduce, or control the issuance of air contaminants. NCUAQMD Rule 240(a).

29. A PTO may not be issued to a stationary source unless the source is constructed pursuant to an ATC that meets all District requirements, including but not limited to the applicable PSD program requirements; an emission analysis is performed; and the source is altered if necessary to comply with all of the District's requirements, including the requirements of Rule 230. NCUAQMD Rule 240(c).

30. Any owner or operator who commenced construction of a major stationary source or major modification subject to the District's Rules 200, 220, 230 and 240 that failed to apply for and obtain an ATC; obtain a PTO before beginning operation or use of the source; or incorporate all applicable PSD requirements into the ATC and PTO is subject to appropriate enforcement action by EPA. Sections 113 and 167 of the Act, 42

U.S.C. §§ 7413 and 7477.

FINDINGS OF FACT

31. The Facility is an electric generating facility located in Blue Lake, Humboldt County, California.

32. Humboldt County was designated as attainment/unclassifiable at all times for CO, NO_2 and PM_{10} by operation of law under Section 107(d)(1)(C) of the Act, 42 U.S.C. § 7407(d)(1)(C). *See* 40 C.F.R. § 81.305. Therefore, the PSD program requirements apply to the Facility for these pollutants.

33. BLP is a current operator of the Facility.

34. The combustion of wood waste and diesel at the Facility produces emissions of CO, NO_x and PM_{10}, among other pollutants, which are released into the atmosphere from the Facility.

35. The Facility was first issued an ATC from the District on Jan. 12, 1984.

36. Construction of the Facility was initially completed in 1986 and operations began in 1987.

37. The Facility ceased operations on April 29, 1999. Between May 1, 1999 and 2008 all equipment at the Facility was idle; most of the time there was only one employee or security guard working at the Facility; only minimal maintenance was performed on the equipment at the Facility, consisting largely of turning on the conveyers and fans manually; the fuel storage area had sapling alder and willows growing on it, indicating lack of use; and statements were made by a representative of the

prior owner or operator of the Facility that future plans for the Facility included "dismantling the plant completely, or shipping the plant out-of-state."

38. BLP purchased the Facility on January 17, 2008.

39. Between 2008 and 2010, BLP undertook various construction work at the Facility, including on the boiler island, the electrical substation, the fuel conveying system, turbine/generator, emissions control devices and other equipment. The cost of this work was over $6 million.

40. BLP began testing the Facility on December 20, 2009, and restarted operations of the Facility on April 20, 2010, almost eleven years after the Facility had stopped operating. BLP continues to operate the Facility.

41. BLP did not apply for or obtain a new ATC for the work described in Paragraph 39 or for the restart of the Facility, but rather claimed it did not need an ATC.

42. BLP did not obtain a new PTO before restarting operations or using the Facility as described in Paragraph 40, but is rather operating under the Facility's original 1998 PTO.

FINDING OF VIOLATION

43. The changes identified in Paragraph 39 are "physical changes" for purposes of the definition of "major modification" in accordance with the District's Rule 200(c)(6) and 40 C.F.R. § 52.21(b)(2)(i).

44. Restarting the Facility as described in Paragraph 40 is a "change in the method of operation" for purposes of the definition of "major modification" in accordance with the

District's Rule 200(c)(6) and 40 C.F.R. § 52.21(b)(2)(i).

45. Restarting the Facility in 2010 as described in Paragraph 40 also makes the Facility a "new" source pursuant to the District's Rule 200(c)(6) and 40 C.F.R. § 52.21(a)(2) since the 1999 shutdown was a "permanent" shutdown of the Facility.

46. As determined by the District, the Facility's annual emissions after the restart are at least 810.3 tpy of CO, 120.6 tpy of NO_x and 32.4 tpy of PM_{10}.

47. The Facility's potential to emit, at a minimum, is the annual emissions identified by the District as described in Paragraph 46.

48. For the restart of a long-dormant source, such as the Facility, the baseline from which to calculate an emissions increase pursuant to the District's Rule 220(a)(3) and 40 C.F.R § 52.21(b)(21)(ii) is zero. Because there are no other creditable increases or decreases in actual emissions at the Facility, the Facility's "net emissions increase" as defined in the District's Rule 130(n1) and 40 C.F.R. § 52.21(b)(3)(i) are the overall potential emissions from the Facility after the restart, which at a minimum are those emissions identified in Paragraph 46.

49. Since the Facility's potential to emit, as identified in Paragraph 46, is greater than 100 tpy of CO, 40 tpy of NO_x and 15 tpy of PM_{10}, the Facility is subject to the requirements of PSD as a modified source with no baseline emissions and a "significant" net emissions increase. Since the Facility's potential to emit is greater than 250 tpy of CO, the Facility is

also subject to PSD requirements as a new source that has the potential to emit above the threshold for "major stationary source."

50. As a result, BLP's physical changes to the Facility and restart of the Facility after almost eleven years of being idle subjected the Facility to the ATC permitting requirements of Rule 200 and 230.

51. Moreover, since BLP's physical changes to the Facility and restart of the Facility resulted in "significant" net emissions from the Facility that also exceeded the threshold for "major stationary source," the ATC was also required to incorporate PSD requirements pursuant to Rule 220.

52. Finally, because the Facility became subject to the District's ATC permitting requirements and PSD requirements, the Facility was also required to obtain a new PTO containing all applicable PSD requirements before it began operating the Facility in April 20, 2010.

53. BLP's failures to apply for and obtain an ATC prior to commencing the changes identified in Paragraph 39 and restarting the facility; obtain a new PTO prior to restarting or using the Facility; and having the PSD requirements included in the ATC and PTO violate the District's Rules 200(a), 200(b), 220(b)(1), 220(b)(2), 220(b)(3), and 240(a).

NOTICE OF VIOLATION

Authority to Construct or Modify, Prevention of Significant Deterioration, and Permit to Operate

54. Pursuant to Section 113(a)(1) of the Act, notice is

hereby given to BLP that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that BLP is in violation of the District's requirements to apply for and obtain an ATC for the Facility; obtain a PTO for the Facility; and comply with all applicable PSD requirements, as described in this NOV.

Enforcement

55. For any violation of a SIP, such as for permit violations, Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of thirty (30) days following the date of the issuance of a notice of violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the SIP, issue an administrative penalty order, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties of not more than $32,500 per day for each violation that occurs after March 14, 2004, and not more than $37,500 per day for each violation that occurs after January 12, 2009. 42 U.S.C. § 7413(a)(1); Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, as amended; 40 C.F.R. Part 19.

56. Section 113(c) of the Act, 42 U.S.C. § 7413(c), provides for criminal penalties, imprisonment, or both for persons who knowingly violate any federal regulation or permit requirement. For violations of the SIP, a criminal action can be brought thirty (30) days after the date of issuance of a Notice of Violation.

57. Section 306 of the Act, 42 U.S.C. § 7606, the regulations promulgated thereunder at 2 C.F.R. Part 180, and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in BLP and/or the Facility being declared ineligible for participation in any federal contract, grant, or loan.

Penalty Assessment Criteria

58. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), states that the Administrator or the court shall determine the amount of a penalty to be assessed by taking into consideration such factors as justice may require, including the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violation.

59. Section 113(e)(2) of the Act, 42 U.S.C. § 7413(e)(2), allows the Administrator or the court to assess a penalty for each day of violation. This section further provides that for purposes of determining the number of days of violation, where EPA makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of an NOV, the days of violation shall be

presumed to include the date of the NOV and each and every day thereafter until the facility establishes that continuous compliance has been achieved, except to the extent that the facility can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

Opportunity for Conference

60. BLP may confer with EPA regarding this NOV if it so requests. A conference would enable BLP to present evidence bearing on the finding of violation, on the nature of violation, and on any efforts it may have taken or proposes to take to achieve compliance. If BLP seeks such a conference, it may choose to be represented by counsel. If BLP wishes to confer with EPA, it must make a request for a conference within ten (10) working days of receipt of this NOV. Any request for a conference or other inquiries concerning the NOV should be made in writing to:

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Dated: 3/3/14

Kathleen H. Johnson
Director, Enforcement Division